IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1533 OF 2006
IN
REVIEW PETITION (ST) NO. 15943 OF 2004
IN
WRIT PETITION NO. 6086 OF 1999

1. The State of Maharashtra & 2 ors.] .. Petitioner

Versus

1. Furniscape India Pvt. Ltd. & Anr.] .. Respondents

Mr. V.P. Malvankar, AGP, for the applicant/petitioners.

Mr. H.N. Vakil i/b M/s. Mulla & Mulla and Cragie Blunt & Caroe for the respondents.

CORAM: R.M. LODHA &
NARESH H. PATIL, JJ.

DATED: 14TH AUGUST, 2006

P.C. :

. On 23rd December, 1999 the Division Bench disposed of the Writ Petition filed by the present respondents by the following order:

> "Rule returnable forthwith. Respondents waive service through AGP Mr.C.R. Sonawane.
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> 2. By consent, petition called out and heard. The Respondents have sealed the machinery in the factory of the petitioner on the footing that this is a saw mill and it is located within the prohibited zone. The petitioner contends that what he is running is a saw mill and he is using the machinery

for cutting ply wood and not for cutting round timber.

3. In similar circumstances, another petitioner in writ petition No.6635 of 1999 was permitted to run a saw mill on giving undertaking as directed by the Court. We have been apprised from the order dated 14/12/99 made in the Writ petition No.6635 of 1999 by the Division Bench consisting Pandya & Daga, JJ. Petitioner has filed similar undertaking dated 23/12/99 before us.

4. Smt. Tasnen N. Nagri who is present before the Court, filed undertaking today. Undertaking accepted and taken on record. We direct the petitioner to abide by the undertaking and make the rule absolute in terms of prayer clause-(a) on the condition that the petitioner abides by the undertaking given today.

Rule accordingly made absolute."

2. The undertaking given by the respondents reads thus:

"I, Mrs. Tasnen N. Nagri, the Managing Director of the Petitioner No.1 abovenamed on behalf of Petitioner No.1 and on my behalf do hereby state on solemn affirmation as follows.

1. I say that the Petitioner has started a factory manufacturing bed room furniture etc. at the premises situate at 1032, Hissa No.1/1, 245 Niphan, Khapoli, Khalapur, Dist. Raigad and is registered as a small scale industry with the Director of Small Scale Industries, State of Maharashtra. I say that the said factory is located in the Industrial Centre set up by the State of Maharashtra. I say that for the purpose of manufacturing bed room furniture, the Petitioners have been purchasing from the open market particle board and board fibre which are treated with PVC foils and paper foils and then used for

> production of bed room furniture and kitchen furniture. I say that the sheets are of various thickness and then cut into various sizes and shapes to suit the final product manufactured. For the said purpose, the Petitioner use the circular saw by 12" and other machinery. I say that the said machinery is not used for cutting the round timber but as a matter of fact is in capable of using of cutting of round timber or the wood. I undertake to this Hon'ble Court that the Petitioners have not used the said machinery for cutting the wood or round timber and I hereby undertake that they shall never use the same for cutting the round timber or wood and shall use the said machinery only for the purposes of making the furniture out of particle board and fibre board purchased as set out in paragraph 3 of the petition. I undertake to maintain stock of raw materials and also undertake to inform the closing and opening balance of the same to the authority i.e. Deputy Conservator of Forest, Alibag, Raigad every month."

3. Aggrieved by the order dated 23rd December, 1999 the present petitioners filed Review Application on 6th May, 2004 seeking review of the order dated 23rd December, 1999. Since the Review Application is barred by time, the petitioners have made the application for condonation of delay.

4. That the Review Application is barred by more than 1500 days is not in dispute. The question for our consideration is whether such long delay of more than 1500 days is sufficiently explained.

5. The certified copy of the order dated 23rd December, 1999 was obtained on 28th January, 2000. It is stated that upon receipt of the certified copy of the judgment, the Deputy Conservator of Forest, Alibag sent the said copy of the judgment and order to the Chief Conservator of Forest (Protection), Maharashtra State, Nagpur seeking direction in order to file Appeal against the said judgment and order. The application is silent about the date on which the Deputy Conservator of Forest, Alibag sent the copy of the judgment and order to the Chief Conservator of Forest.

6. However, it transpires that on 16th May, 2000 the Chief Conservator of Forest sent a letter to the Revenue & Forest Department, Government of Maharashtra, Mantralaya, Mumbai for their opinion as to whether the case was fit for filing an Appeal. Upon receipt of the letter dated 16th may, 2000, the Revenue & Forest Department is said to have sent proposal to Law & Judiciary Department for its opinion in respect of filing an Appeal in the matter. As to on what date the Revenue & Forest Department, Mantralaya sent the proposal to the Law & Judiciary Department is also not disclosed.

7. It is stated in the application that upon

receipt of the letter from the Revenue & Forest Department, Law & Judiciary Department asked the Revenue & Forest Department to submit the papers concerning the Writ Petition, the opinion of the Additional Government Pleader, High Court, Mumbai, parawise reply submitted in the matter, Affidavit in reply to the Writ Petition, copy of the judgment and order passed in Writ Petition No.6635 of 1999 for giving opinion in the matter.

8. According to the applicants, upon receipt of the letter from the Law & Judiciary Department, the Revenue & Forest Department sent a letter to the Deputy Conservator of Forest, Alibag on 18th September, 2000 seeking complete information.

9. The Deputy Conservator of Forest received the letter dated 18th September, 2000 sent by Revenue & Forest Department on 25th September, 2000. Thereafter, Deputy Conservator of Forest, Alibag on 10th October, 2000 sent the letter to the office of the Additional Government Pleader, High Court, Mumbai requesting an opinion for filing Appeal in the matter.

10. The matter seems to have tossed between the Deputy Conservator of Forest, Alibag, Revenue & Forest Department, Mantralaya, Conservator of Forest, Thane

Circle and Additional Government Pleader for more than a year.

11. On 23rd January, 2002 the Assistant Government Pleader is said to have opined that the case was not fit for filing an Appeal. The said opinion was received by the office of the Deputy Conservator of Forest, Alibag on 30th January, 2002. The matter again tossed for about seven months between the office of the Deputy Conservator of Forest, Alibag and the Revenue & Forest Department, Mantralaya. Ultimately, by the communication dated 19th August, 2002, which was received by the office of the Deputy Conservator of Forest, Alibag on 24th August, 2002, the Revenue & Forest Department directed to file Review Petition in the matter and sent a draft copy thereof.

12. Then again the matter got tossed between Deputy Conservator of Forest, Alibag, Chief Conservator of Forest (Protection) and the Revenue & Forest Department for almost eighteen months and it was only on 26th March, 2004 the office of the Deputy Conservator of Forest submitted the draft Review Petition along with a sanction letter to the office of the Additional Government Pleader on 15th April, 2004. Almost three weeks thereafter, the present Review Petition came to be

filed.

13. The aforesaid facts clearly indicate not only lack of urgency on the part of various Government departments and officials, but also gross negligence. It took more than two years in getting the opinion of the Assistant Government Pleader that the matter was not fit for filing Appeal. More than six months were taken thereafter in taking decision by the Deputy Conservator of Forest that Review Petition may be filed. Even after the decision was taken on 24th August, 2002 that Review Petition be filed seeking review of the order dated 23rd December, 1999, more than one and half year thereafter the Additional Government Pleader was asked to prepare and draft the Review Petition. It is true that in the matter of Government, before any decision is taken, the papers move from one authority to the other and one office to the other and, therefore, reasonable latitude may be given while considering the question of condonation of delay. The present case, however, reflects gross negligence on the part of the concerned officials in acting swiftly. Rather, it appears that at every stage the concerned officials and officers sat over the matter and proceeded leisurely. The long delay of more than 1500 days remains unexplained and no sufficient cause for condonation of delay is made out.

13. By way of footnote we may observe that in the Review Petition, one of the grounds seeking review of the order dated 23rd December, 1999 is founded on the judgment and order dated 14th July, 2003 passed by the Supreme Court of India in Interlocutory Application No.414 in Writ Petition (Civil) No. 202 of 1995.

14. A look at the undertaking that we have reproduced above would show that the respondents herein have undertaken that the circular saw of twelve inches used by the petitioner is not used for cutting the wood or round timber. The respondents have undertaken that they shall never use the saw for cutting the round timber or wood and shall use the said machinery only for the purpose of making the furniture out of particle board and fibre board. The respondents herein have also undertaken to maintain stock of raw material and also inform the closing and opening balance to the Deputy Conservator of Forest, Alibag. If there is any breach of the undertaking, the remedy to the applicants is to proceed against the present respondents for contempt of Court. They surely do not make out a ground for review.

15. Be that as it may, since long delay of more than 1500 days has not been sufficiently explained, the

Civil Application is liable to be dismissed and is dismissed.

Sd/-
[R.M. LODHA, J.]

Sd/-
[NARESH H. PATIL, J.]